

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DISCOUNT TRUCK TIRES, LLC
d/b/a TRUCK ZONE,
Plaintiff,

v.

METROPOLITAN PROPERTY &
CASUALTY INSURANCE CO.,
Defendant.

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CIVIL ACTION NO. _____

PLAINTIFF'S ORIGINAL COMPLAINT

DISCOUNT TRUCK TIRES, LLC D/B/A TRUCK ZONE files this action against its insurer, METROPOLITAN PROPERTY & CASUALTY INSURANCE CO., for failing to make payments required by an insurance policy for covered losses caused by Hurricane Harvey.

PARTIES

1. Plaintiff Discount Truck Tires, LLC d/b/a Truck Zone is a limited liability company registered under the laws of the State of Texas with its principal place of business in Houston, Texas. All members of Truck Zone are citizens of Texas.

2. Metropolitan Property & Casualty Insurance Co. is a corporation registered under the laws of the State of Delaware and may be served through its registered agent, C T Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are completely diverse and more than \$75,000 is in controversy.

4. Venue is proper in the Southern District of Texas, Houston Division, because the damage to the Property occurred in this district, the demand for payment under the Policy was made from this district, and payment was due to the Insured in this district. Therefore, a substantial part of the events or omissions giving rise to the claim occurred in this district.

BREACH OF CONTRACT

5. On or about June 9, 2017, Discount Truck Tires, LLC d/b/a Truck Zone (the “Insured”) obtained an insurance policy (the “Policy”) from Metropolitan Property and Casualty Insurance Company (the “Insurer”) covering the Insured’s property at 5011 McCarty St., Houston, Texas 77013 (the “Property”).

6. On or about August 26, 2017, during Hurricane Harvey, the Property sustained hundreds of thousands of dollars of damage or loss covered by the Policy. The report of Poynor Group discussing damage or loss to the Property is attached as Exhibit 1. The report attached as Exhibit 2 reflects certain covered inventory damaged during the storm.

7. The Insured submitted a claim to the Insurer for the damage or loss sustained during Hurricane Harvey as required by the Policy. The Insured satisfied all obligations and conditions precedent under the Policy, including submitting the applicable proof of loss, permitting inspections of the Property, and providing the documentation supporting the claim. The Insurer wrongly refused to pay the Insured’s full claim under the Policy. The Insurer continues to refuse to pay the full amount due under the Policy to the Insured.

8. By failing to make all required payments, the Insurer has breached the terms of the Policy, proximately causing the Insured to suffer damage.

9. The Insured seeks a monetary judgment for the full amount due under the Policy plus reasonable and necessary attorney's fees, pre- and post-judgment interest, and any statutory damages permitted by applicable law.

RESERVATION OF RIGHTS

10. Based on the potentially frivolous bases for refusing to pay the full amount due under the policy by the Insurer, the Insurer's denial of coverage may have been in bad faith, involved negligent or knowing misrepresentations, violated the Insurer's common law duties, and violated statutory requirements of the Texas Insurance Code.

11. Discovery is needed to ascertain whether and the extent to which the Insurer is liable for extracontractual claims.

12. The Insured reserves all rights to amend to include extracontractual claims that will "relate back" to this filing if supported by the facts revealed in discovery.

PRAYER

13. Plaintiff demands this case be tried to a jury on all issues so triable.

14. Plaintiff requests the Court enter judgment that Defendant is liable to Plaintiff for breach of contract and that Plaintiff is entitled to recover all actual damages, attorney's fees, costs of court, pre- and post-judgment interest, or any other damages recoverable by Texas law.

Respectfully submitted,

/s/ *Ethan G. Gibson*

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